MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.210 OF 2007

Unitrol Engineering Limited Appellant
versus
Kulkarni Engineers Respondent

Mr.P.K.Dhakephalkar, Sr.Counsel with Ms.S. T. Shaikh i/by S. K. Srivastav & Co. for appellant.

CORAM : A.S.OKA, J.

DATE : 02nd April 2007

PC :

1. The submissions of learned Senior Counsel appearing for the appellant were heard on the last date. The appellant is the defendant in a suit for Specific Performance of an alleged Agreement of Sale of an immovable property. By the impugned judgement and order passed on 8th December 2006, the learned Trial Judge has allowed the application for temporary injunction filed by the respondent-plaintiff and has restrained the appellant company from creating any third party interests in the suit property and from alienating the suit property in any

manner and from parting with possession of the suit property to any person till the final disposal of the suit.

2. Learned senior counsel appearing for the appellant submitted that the suit agreement is a Memorandum of Understanding (hereinafter referred to as "the MOU") in which there is a stipulation to enter into a proper Agreement for Sale. He submitted that the Agreement/MOU has been executed by the Promoters of the appellant company when the said company was under liquidation in a winding up petition. He submitted that therefore, the said Agreement/MOU is not binding on the appellant company. He also invited my attention to a specific understanding between the parties reached on 29th August 2006 and submitted that as the respondent has failed to pay the balance consideration within the time stipulated in the said meeting, the MOU which is sought to be enforced by filing the suit, has come to an end. He stated that the amount of Rs.60.00 lakhs which is allegedly paid by the respondent to the appellant under the MOU will be deposited by the appellant in the Trial Court. He pointed out that an application was made seeking permission of the Trial Court to deposit

a sum of Rs.63,19,300/- with the Trial Court but the said application was rejected by the Trial Court by order dated 18th December 2006. He submitted that no case was made out for grant of interim injunction.

3. I have considered the submissions. Prima facie, it appears that out of the agreed consideration of Rs.1.00 crore, a sum of Rs.60.00 lakhs was paid by the respondent-plaintiff to the appellant-defendant. There is some material on record to show that at the time of execution of the MOU, the appellant company was facing a winding up petition. It is the case of the respondent that during pendency of the winding up petition, the appellant intended to transfer it’s assets and, therefore, the offer was given by the respondent-plaintiff to acquire the assets.

4. As pointed out earlier, there is material on record to show that a sum of Rs.60.00 lakh was paid by the respondent-plaintiff and in fact an application was moved at Exhibit-22 by the appellant seeking permission to deposit the said amount with interest with the Trial Court. In fact, one of the defences raised by the appellant is that in view of the non compliance of the

agreement arrived at in the meeting held on 29th August 2006, the MOU on the basis of which the suit was filed stands terminated or cancelled.

5. Thus, in this case, prima facie, there appears to be an agreement between the parties for sale of the property. Substantial part of the consideration i.e. a sum of Rs.60.00 lakhs was paid by the respondent-plaintiff to the appellant. Reliance is placed on an understanding arrived at in the meeting held on 29th August 2006 between the parties. Whether the MOU on the basis of which the suit is filed is enforceable in law or not and whether the same has come to an end as a result of the understanding reached on 29th August 2006, are the questions which are required to be decided at the time of trial of the suit. Considering the payment of large amount by the respondent and prima facie material on record, no fault can be found with the finding recorded by the Trial Court that the respondent-plaintiff has established a prima facie case. Pending the suit if third party interests are created or if possession is parted with, obviously it will cause irreparable loss to the respondent-plaintiff. Considering the payment of

Rs.60 lakhs, the learned Trial Judge has rightly found that the balance of convenience was in favour of the respondent- plaintiff.

6. No case is made out for interference in the order of the temporary injunction passed by the Trial Court which has the result of maintaining status-quo in respect of the property till final disposal of the suit. Considering the offer made by the appellant to deposit a sum of Rs.60.00 lakhs, this is a fit case where hearing of the suit deserves to be expedited. The Written Statement is already filed by the appellant.

7. Hence, I pass following order :-

(a) Appeal from Order is dismissed with no order as to costs;

(b) Hearing of the suit is expedited and the Trial Court is expected to dispose of the suit preferably on or before 30th April 2008;

(c) All contentions of the parties on merits of the suit are expressly kept open;

(d) The suit will be decided without being influenced by the interim order passed by the Trial Court and confirmation thereof by this Court;

(e) In view of this order, Civil Application No.312 of 2007 does not survive and stands dismissed as such.

(A.S.OKA, J.)